

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re WILLIAM W., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM W.,

Defendant and Appellant.

D049279

(Super. Ct. No. J211437)

APPEAL from an order of the Superior Court of San Diego County, Federico
Castro, Judge. Affirmed.

The juvenile court declared William W. a ward (Welf. & Inst. Code, § 602) after
he admitted committing burglary (Pen. Code, § 459).¹ The court dismissed with a
Harvey waiver (*People v. Harvey* (1979) 25 Cal.3d 754) charges that the burglary was to

a residence (§ 460) and that William committed grand theft (§ 487, subd. (a)), and caused over \$400 in damages through malicious mischief (§ 594, subds. (a), (b)(1)). The court placed William on probation subject to conditions, including a condition he pay victim restitution. At a restitution hearing, the court ordered William to pay victim restitution in the amount of \$3,265. William contends the trial court abused its discretion by ordering him to pay \$3,265 restitution.

FACTS

On April 3, 2006, members of the Shughrue/Elliott family discovered their home had been burglarized. Gift cards and jewelry were missing. While police investigated, William's father, a neighbor, gave the officers jewelry and a car key he found in William's room. Police searched William and found additional property taken from the Shughrue/Elliott home. The jewelry was apparently misplaced by the police department and the Shughrues/Elliotts did not recover it. They determined replacement value of the jewelry was \$3,265.

The parties presented no witnesses at the restitution hearing. William's counsel told the court he knew his client was responsible for the loss but said he was troubled by the police losing the jewelry. The court responded, "[w]e go to the root of the system. And he's [William] responsible for \$3,265."

¹ All statutory references are to the Penal Code unless otherwise specified.

DISCUSSION

The People contend that William forfeited his right to challenge the restitution order on appeal because he did not object to the order in the trial court. We accept William's claim that the purpose of requiring an objection in the trial court is to call to the trial court's attention an issue (see *Sommer v. Martin* (1921) 55 Cal.App. 603, 610), and that defense counsel has met its duty when counsel reminded the court that the police, not William, lost the missing property.

We affirm a juvenile court's order that a minor pay restitution "[w]hen there is a factual and rational basis for the amount of restitution ordered by the trial court [resulting in] no abuse of discretion" [Citations.] (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) Welfare and Institutions Code section 730.6, subdivisions (a)(1) and (h) provide that a victim should be reimbursed in the amount of the loss resulting from the conduct of a minor within Welfare and Institutions Code section 602. The standard of proof required at a restitution hearing is a preponderance of the evidence, in the absence of a statute or case authority to the contrary. (Evid. Code, § 115.) One purpose of requiring the minor to make restitution is its deterrent and rehabilitative effect. (See *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1388-1389.)

William argues his conduct was not the direct cause of the victims' loss because the police lost the jewelry after his father gave it to them. In determining whether the trial court abused its discretion in ordering William to make restitution for the missing jewelry, we must determine whether there is a sufficient nexus between William's

conduct and the loss. Had William not burglarized his neighbor's home, the victims would not have sustained the loss.

We note that the trial court dismissed the theft charge. However, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) After William entered a guilty plea to the burglary charge, the court dismissed with a *Harvey* waiver (*People v. Harvey, supra*, 25 Cal.3d 754) the theft charge. In juvenile cases, "statutory mandates and good sense require consideration of all relevant circumstances when deciding the level of restriction to be imposed, even those related to dismissed allegations." (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) The trial court did not abuse its discretion in ordering William to pay restitution for the missing jewelry because the record establishes a sufficient connection between William's conduct and the loss for which restitution was ordered. The risk the stolen jewelry would be misplaced by the police must be assumed by the thief and the police conduct does not constitute an independent intervening cause that relieves the thief of responsibility for the victims' loss.

DISPOSITION

The juvenile court's order that William pay \$3,265 victim restitution is affirmed.

McDONALD, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.